

IC 12-17.2-2

Chapter 2. General Powers and Duties of the Division

IC 12-17.2-2-1

Duties of division

Sec. 1. The division shall perform the following duties:

- (1) Administer the licensing and monitoring of child care centers or child care homes in accordance with this article.
- (2) Ensure that a criminal history background check of the applicant is completed before issuing a license.
- (3) Ensure that a criminal history background check of a child care ministry applicant for registration is completed before registering the child care ministry.
- (4) Provide for the issuance, denial, suspension, and revocation of licenses.
- (5) Cooperate with governing bodies of child care centers and child care homes and their staffs to improve standards of child care.
- (6) Prepare at least biannually a directory of licensees with a description of the program capacity and type of children served that will be distributed to the legislature, licensees, and other interested parties as a public document.
- (7) Deposit all license application fees collected under section 2 of this chapter in the child care fund.
- (8) Require each child care center or child care home to record proof of a child's date of birth before accepting the child. A child's date of birth may be proven by the child's original birth certificate or other reliable proof of the child's date of birth, including a duly attested transcript of a birth certificate.

As added by P.L.1-1993, SEC.141. Amended by P.L.12-1994, SEC.6.

IC 12-17.2-2-1.5

Child care center or child care home reports of children enrolled; parental consent to submission of information

Sec. 1.5. (a) The division shall require all child care centers or child care homes to submit a report containing the names and birth dates of all children who are enrolled in the child care center or child care home within three (3) months from the date the child care center or child care home accepts its first child, upon receiving the consent of the child's parent, guardian, or custodian as required under subsection (b). The division shall require all child care centers and child care homes that receive written consent as described under subsection (b) to submit a monthly report of the name and birth date of each additional child who has been enrolled in or withdrawn from the child care center or child care home during the preceding thirty (30) days.

(b) The division shall require all child care centers or child care homes to request whether the child's parent, guardian, or custodian desires the center or home to include the child's name and birth date in the reports described under subsection (a) before enrolling the child in the center or home. No child's name or birth date may be included on

the report required under subsection (a) without the signed consent of the child's parent, guardian, or custodian. The consent form must be in the following form:

"I give my permission for _____ (name of day care center or home) to report the name and birth date of my child or children to the division of family and children pursuant to IC 12-17.2-2-1.5.

Name of child _____

Birth date _____

Signature of parent, guardian, or custodian _____

Date _____ "

(c) The division shall submit a monthly report of the information provided under subsection (a) to the Indiana clearinghouse on missing children established under IC 10-1-7.

(d) The division shall require that a person who transports children who are in the care of the child care center on a public highway (as defined in IC 9-25-2-4) within or outside Indiana in a vehicle designed and constructed for the accommodation of more than ten (10) passengers must comply with the same requirements set forth in IC 20-9.1-5-6.6 for a public elementary or secondary school or a preschool operated by a school corporation.

As added by P.L.12-1994, SEC.7. Amended by P.L.278-2001, SEC.1.

IC 12-17.2-2-2

Powers of division

Sec. 2. The division may do the following:

(1) Prescribe forms for reports, statements, notices, and other documents required by this article or by the rules adopted under this article.

(2) Increase public awareness of this article and the rules adopted under this article by preparing and publishing manuals and guides explaining this article and the rules adopted under this article.

(3) Facilitate compliance with and enforcement of this article through the publication of materials under subdivision (2).

(4) Prepare reports and studies to advance the purpose of this article.

(5) Seek the advice and recommendations of state agencies whose information and knowledge would be of assistance in writing, revising, or monitoring rules developed under this article. These agencies, including the office of the attorney general, state department of health, division of mental health and addiction, bureau of criminal identification and investigation, and fire prevention and building safety commission, shall upon request supply necessary information to the division.

(6) Make the directory of licensees available to the public for a charge not to exceed the cost of reproducing the directory.

(7) Charge a reasonable processing fee for each license application and renewal as follows:

(A) For a child care center license, a fee of two dollars (\$2) per licensed child capacity.

(B) For a child care center new inquiry application packet, a fee not to exceed five dollars (\$5).

(C) For a child care home license new inquiry application packet, a fee not to exceed five dollars (\$5).

(D) For a child care home annual inspection, a fee not to exceed twenty-five dollars (\$25).

(8) Exercise any other regulatory and administrative powers necessary to carry out the functions of the division.

As added by P.L.1-1993, SEC.141. Amended by P.L.215-2001, SEC.51.

IC 12-17.2-2-3

Child care fund

Sec. 3. (a) The child care fund is established for the purpose of providing training and facilitating compliance with and enforcement of this article and IC 12-17.4. The fund shall be administered by the division.

(b) The fund consists of the fees and civil penalties collected under this article and IC 12-17.4.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-2-4

Child care center licensing and inspection rules

Sec. 4. (a) The division shall adopt rules under IC 4-22-2 concerning the licensing and inspection of child care centers and child care homes after consultation with the following:

(1) State department of health.

(2) Fire prevention and building safety commission.

(3) The board.

(b) The rules adopted under subsection (a) shall be applied by the division and state fire marshal in the licensing and inspection of applicants for a license and licensees under this article.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-2-5

Child care ministry inspection rules

Sec. 5. (a) The division shall adopt rules under IC 4-22-2 to govern the inspection of child care ministries under this article. The rules must provide standards for sanitation.

(b) A child care ministry shall comply with rules established by the division for child care ministries.

As added by P.L.1-1993, SEC.141. Amended by P.L.159-1995, SEC.1.

IC 12-17.2-2-6

Monitoring of licensed entities

Sec. 6. (a) The division shall monitor entities licensed under this article for the continued compliance with this article and the rules adopted by the division.

(b) The division shall conduct monitoring activities that include onsite inspections, record reading, observation, and interviewing.

(c) The division shall conduct an onsite licensing study at least one (1) time a year in announced or unannounced visits.

(d) The division is entitled to access to the premises, personnel, children in care, and records, including case records, foster care records, personnel files, corporate and fiscal records, and board minutes. Access shall also be provided to personnel from other state agencies or other persons who provide inspections at the request of the division.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-2-7

Investigation of complaints

Sec. 7. The division shall investigate complaints to determine possible noncompliance with the rules adopted by the division. The licensee is entitled to add comments concerning a complaint to the licensing file. The division shall consider all formal complaints against a licensee before a license may be renewed.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-2-8

Licensure exemptions

Sec. 8. The division shall exempt from licensure the following programs:

(1) A program for children enrolled in grades kindergarten through 12 that is operated by the department of education or a public or private school.

(2) A program for children who become at least three (3) years of age as of December 1 of a particular school year (as defined in IC 20-10.1-2-1) that is operated by the department of education or a public or private school.

(3) A nonresidential program for a child that provides child care for less than four (4) hours a day.

(4) A recreation program for children that operates for not more than ninety (90) days in a calendar year.

(5) A program whose primary purpose is to provide social, recreational, or religious activities for school age children, such as scouting, boys club, girls club, sports, or the arts.

(6) A program operated to serve migrant children that:

(A) provides services for children from migrant worker families; and

(B) is operated during a single period of less than one hundred twenty (120) consecutive days during a calendar year.

(7) A child care ministry registered under IC 12-17.2-6.

(8) A child care home if the provider:

(A) does not receive regular compensation;

- (B) cares only for children who are related to the provider;
 - (C) cares for less than six (6) children, not including children for whom the provider is a parent, stepparent, guardian, custodian, or other relative; or
 - (D) operates to serve migrant children.
- (9) A child care program operated by a public or private secondary school that:
- (A) provides day care on the school premises for children of a student or an employee of the school;
 - (B) complies with health, safety, and sanitation standards as determined by the division under section 4 of this chapter for child care centers or in accordance with a variance or waiver of a rule governing child care centers approved by the division under section 10 of this chapter; and
 - (C) substantially complies with the fire and life safety rules as determined by the state fire marshal under rules adopted by the division under section 4 of this chapter for child care centers or in accordance with a variance or waiver of a rule governing child care centers approved by the division under section 10 of this chapter.
- (10) A school age child care program (commonly referred to as a latch key program) established under IC 20-5-2-1.5 that is operated by:
- (A) the department of education;
 - (B) a public or private school; or
 - (C) a public or private organization under a written contract with:
 - (i) the department of education; or
 - (ii) a public or private school.

As added by P.L.1-1993, SEC.141. Amended by P.L.61-1993, SEC.8; P.L.136-1993, SEC.6; P.L.2-1995, SEC.50; P.L.50-2001, SEC.1.

IC 12-17.2-2-9

Migrant children's programs

Sec. 9. (a) A program operated to serve migrant children that is exempted under section 8(6) of this chapter and is certified by the United States Department of Health and Human Services shall be:

- (1) granted a provisional license by the division, for a limited period not to exceed one (1) year and that is subject to review every three (3) months, if the division determines that the program reasonably complies with the rules adopted by the division; and
 - (2) inspected by the state fire marshal's office.
- (b) The division and the fire prevention and building safety commission shall adopt rules under IC 4-22-2 that apply only to programs operated to serve migrant children that take into consideration the fact that the programs:
- (1) operate in donated space;
 - (2) provide services for children from migrant worker families; and
 - (3) are operated during a single period of less than one hundred

twenty (120) consecutive days during a calendar year.

(c) This section does not prohibit a program operated to serve migrant children from applying for a license under this article.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-2-10

Variances and waivers

Sec. 10. (a) The division may grant a variance or waiver of a rule governing child care centers, child care homes, child caring institutions, foster homes, group homes, or child placing agencies. A variance or waiver granted under this section must promote statewide practices and must protect the rights of persons affected by this article.

(b) The division may grant a variance to a rule if an applicant for a license or a licensee under this chapter does the following:

- (1) Submits to the division a written request for the variance in the form and manner specified by the division.
- (2) Documents that compliance with an alternative method of compliance approved by the division will not be adverse to the health, safety, or welfare of a child receiving services from the applicant for the variance, as determined by the division.

(c) A variance granted under subsection (b) must be conditioned upon compliance with the alternative method approved by the division. Noncompliance constitutes the violation of a rule of the division and may be the basis for revoking the variance.

(d) The division may grant a waiver of a rule if an applicant for a license or a licensee under this chapter does the following:

- (1) Submits to the division a written request for the waiver in the form and manner specified by the division.
- (2) Documents that compliance with the rule specified in the application for the waiver will create an undue hardship on the applicant for the waiver, as determined by the division.
- (3) Documents that the applicant for the waiver will be in substantial compliance with the rules adopted by the division after the waiver is granted, as determined by the division.
- (4) Documents that noncompliance with the rule specified in the application for a waiver will not be adverse to the health, safety, or welfare of a child receiving services from the applicant for the waiver, as determined by the division.

(e) Except for a variance or waiver of a rule governing child care homes or foster homes, a variance or waiver of a rule under this section that conflicts with a building rule or fire safety rule adopted by the fire prevention and building safety commission is not effective until the variance or waiver is approved by the fire prevention and building safety commission.

As added by P.L.1-1993, SEC.141. Amended by P.L.136-1993, SEC.7; P.L.2-1995, SEC.51.

IC 12-17.2-2-11

Expiration of variances and waivers

Sec. 11. A waiver or variance granted under section 10 of this chapter and a waiver or variance renewed under section 12 of this

chapter expires on the earlier of the following:

- (1) The date when the license affected by the waiver or variance expires.
- (2) The date set by the division for the expiration of the waiver or variance.
- (3) The occurrence of the event set by the division for the expiration of the waiver or variance.
- (4) Two (2) years after the date that the waiver or variance becomes effective.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-2-12

Renewal of variances and waivers

Sec. 12. (a) If the division determines that a waiver or variance expiring under section 11 of this chapter will continue to serve the public interest, the division may do the following:

- (1) Renew the waiver or variance without modifications.
- (2) Renew and modify the waiver or variance as needed to promote statewide practices and to protect the rights of persons affected by this article.

(b) Before taking an action under subsection (a), the division may require a licensee under this article to do the following:

- (1) Apply for the renewal of a waiver or variance on the form specified by the division.
- (2) Provide the information required by the division.

(c) Except for a waiver or variance of a rule governing child care homes or foster homes, before taking an action under subsection (a), the division must obtain the approval of the fire prevention and building safety commission for the action if either of the following occurs:

- (1) The fire prevention and building safety commission substantially changes a building rule or fire safety rule affected by the waiver or variance after the date the commission last approved the waiver or variance.
- (2) The division substantially modifies any part of a waiver or variance that conflicts with a building rule or fire safety rule adopted by the fire prevention and building safety commission.

As added by P.L.1-1993, SEC.141. Amended by P.L.136-1993, SEC.8.

IC 12-17.2-2-13

Revocation of variances and waivers

Sec. 13. (a) If a licensee under this article violates a condition of a waiver or variance under this chapter, the division may issue an order revoking the waiver or variance before the waiver or variance expires under section 11 of this chapter.

(b) If the waiver or variance is revoked under subsection (a), the licensee is entitled to notice and an opportunity for a hearing as provided under this article.

As added by P.L.1-1993, SEC.141.